

CHARLES A. HENDEL

IBLA 72-76

Decided December 19, 1972

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting appellant's application N-1717 to purchase land pursuant to the Mining Claim Occupancy Act and withdrawing the Forest Service's offer to appellant to lease such land for his lifetime.

Affirmed as modified.

Mining Occupancy Act: Generally

Under the Mining Occupancy Act, the Secretary of the Interior may convey an interest in land which is under the administrative jurisdiction of the Forest Service to a qualified applicant only with the consent of the Forest Service; therefore, if the Forest Service determines that the applicant should be offered only a lifetime lease, the Secretary lacks authority to grant any greater interest in the land.

APPEARANCES: Charles A. Hendel, pro se.

OPINION BY MR. STUEBING

Charles A. Hendel appeals from a decision of the Nevada State Office rejecting his application filed pursuant to the Mining Claim Occupancy Act of October 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1970), to purchase approximately four acres of land embraced in the Emteecee Mining Claim situated in the Toiyabe National Forest. The decision also withdrew an offer made by the Forest Service to Hendel to lease the property for his lifetime.

Hendel initially located his mining claim on February 23, 1947, in Mono Basin, approximately 11 1/2 miles southeast of Aurora,

Nevada. <sup>1/</sup> Hendel intended to establish a youth recreation camp which would be financed by the sale of cinder blocks from sands in the vicinity of the claim. This plan did not materialize and in 1967 Hendel, at age 80, decided that he would attempt to purchase the property on which his improvements and the park site were situated. In his application to purchase the land under the Mining Claim Occupancy Act, filed on October 23, 1967, Hendel stated that he had constructed a house on the premises and had resided on the land since May 1, 1947. He alleged that he had expended at least \$ 20,000 in time, labor and cash from 1947 to 1967 for the purpose of establishing a youth recreation camp.

Hendel's Petition for a Statement of Belief concerning the validity of his claim was filed on November 3, 1967. Having reviewed the evaluations made by the Forest Service's mineral examiners, the Nevada State Director, Bureau of Land Management, issued his Statement of Belief on July 17, 1968, declaring the Emteecee Mining Claim invalid.

The Acting Forest Service Supervisor stated in his report that Hendel was a qualified applicant in that he was a residential occupant-owner, as of October 23, 1962, of valuable improvements on an unpatented mining claim which had been his principal place of residence since 1947 when he took possession of the site. The Forest Service recommended that he be offered a lifetime lease for the use of the site and the Nevada State Office concurred.

Appellant consistently refused to accept any relief except for fee title and informed the Forest Service that the lifetime lease was not a good arrangement for his plan to promote a youth recreation camp. On August 16, 1971, the Regional Forester wrote to the State Director, BLM, stating:

\* \* \* we can only report that Mr. Hendel has consistently refused to accept any relief except fee title. Mr. Hendel does not occupy the improvements and lives in Hawthorne, Nevada. Under the circumstances, we believe the case to be closed.

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<sup>1/</sup> This claim, known as the Midnight Pearl mining claim, was located by Hendel and another party who subsequently transferred his interest to Hendel. In 1952, the Forest Service issued Hendel a permit to occupy and develop the entire 640 acres of Sec. 28, T. 4 N., R. 29 E., Mt. Diablo Meridian, as a nonprofit youth recreation camp. Hendel's claim was part of this section. The permit was canceled in 1960, at which time Hendel relocated the Midnight Pearl. This claim, along with other claims in the area, became known as the Emteecee (Mark Twain Camp) Mining Claim.

On August 24, 1971, the State Office rendered its decision withdrawing the offer for the lifetime lease and rejecting appellant's application to purchase the land.

30 U.S.C. § 701 of the Mining Claim Occupancy Act provides as follows:

The Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) 5 acres \* \* \*.

30 U.S.C. § 703 further states:

Where the lands for which application is made under section 701 of this title have been withdrawn in aid of a function of the federal department or agency other than the Department of the Interior \* \* \* the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary.

In applying this law to the facts presented in the instant case we are obliged to affirm the decision of the State Office. Since the land is located in the Toiyabe National Forest, the Secretary can convey an interest in the land only with the consent of the Forest Service. Bernice H. Doll, A-31141 (April 27, 1970); Charles N. Olson, 5 IBLA 4 (1972). The Mining Claim Occupancy Act does not give appellant the unqualified right to receive a fee simple estate. Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969). The Forest Service, in its discretion, has authorized a lease for the lifetime of appellant; the Secretary is therefore without power to interfere with that determination by granting a greater interest in the land. By his refusal to accept the relief offered, appellant has precluded the awarding of any interest in the land. If he accepts the offer, he receives a lease of the four acres for life, within the limitations set by the Forest Service. 2/

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2/ In reviewing the case file, we noted several references made by appellant to his idea of transferring or selling the land to the State of Nevada or a civic group for the purpose of perpetuating his efforts to establish a youth recreational camp. We direct appellant's attention to the fact that a main purpose of the Act is to enable an occupant, who has no other place to go, to retain his home. The lifetime lease therefore includes a provision against assignments.

We observe, however, after study of this file, that appellant apparently did not fully comprehend the applicable law or the significance of his refusal to accept the offer of the Forest Service. In view of this situation, we recommend that the Forest Service provide appellant with another opportunity to accept the offer of the lifetime lease.

Also, 30 U.S.C. § 701 provides that any conveyance authorized by that section shall be made before June 30, 1971. If this case were closed for failure of appellant to take action, a lifetime lease could not be based upon a later application and appellant would lose his opportunity to obtain such a lease. See Charles N. Olson, supra. The case shall remain open to permit the Forest Service, if it so elects, to extend to appellant additional time in which he may accept the offer of the lease. Should the Forest Service elect not to extend the offer again, or should it be extended and again refused by Hendel, the case may then be closed without further action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office rejecting appellant's application to purchase the land is affirmed as herein modified.

Edward W. Stuebing, Member

We concur:

Joseph W. Goss, Member

Joan B. Thompson, Member.

